

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**JAN 12 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

JAVIER CALDERON-ORTIZ,

Petitioner,

v.

ALBERTO R. GONZALES,\*\* Attorney  
General,

Respondent.

No. 03-72653

Agency No. A45-141-112

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted June 7, 2005\*\*\*  
Pasadena, California

Before: TROTT and W. FLETCHER, Circuit Judges, and RESTANI,\*\*\*\* Judge.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

\*\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\*\* The Honorable Jane A. Restani, Chief Judge of the United States Court of International Trade, sitting by designation.

Javier Calderon-Ortiz petitions the Court to review the Board of Immigration Appeals's ("BIA") and immigration judge's ("IJ") determination that he is removable for committing an "aggravated felony" and subsequent denial of his application for cancellation of removal. Calderon's principal contention is that his felony conviction for unlawful driving or taking a vehicle in violation of California Vehicle Code section 10851 does not constitute an aggravated felony. Because the REAL ID Act of 2005 removed the jurisdictional bar over petitions of this sort, we have jurisdiction pursuant to 8 U.S.C. § 1252. Fernandez-Ruiz v. Gonzales, No. 03-74533, slip op. at 3 (9th Cir. May 31, 2005). We grant the petition because this Court has already held that violation of California Vehicle Code section 10851 is not an aggravated felony in circumstances indistinguishable from Calderon's case. Penuliar v. Ashcroft, 395 F.3d 1037 (9th Cir. 2005). Accordingly, the order of removal of which the petitioner complains was predicated on an error of law. Thus, the matter is remanded to the BIA for proceedings consistent with this decision.

Petition GRANTED.